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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR     | ATTORNEY DOCKET NO.          | CONFIRMATION NO. |
|--|-------------|--------------------------|------------------------------|------------------|
| 10/629,538   | 07/29/2003  | Samuel Fournier Lockwood | 5777-00201/EBM               | 6864             |
| 35690  | 7590        | 07/11/2005               |                              |                  |
| MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C.<br>P.O. BOX 398<br>AUSTIN, TX 78767-0398 |             |                          | EXAMINER<br>SOLOLA, TAOFIQ A |                  |
|  |             |                          | ART UNIT<br>1626             | PAPER NUMBER     |
| DATE MAILED: 07/11/2005  |             |                          |                              |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/629,538

Applicant(s)

LOCKWOOD ET AL.

Examiner

Taofiq A. Solola

Art Unit

1626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 06 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 1019, 1033, 1035, 1036, 1039, 1053, 1055 and 1056 is/are allowed.
- 6) ☐ Claim(s) 1021-1023, 1029, 1031, 1037, 1041-1043, 1049, 1051 and 1057 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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This Office action supersedes previous communication.

Claims 1019, 1021-23, 1029, 1031, 1033, 1035-37, 1039, 1041-43, 1049, 1051, 1053, 1055-57 are pending in this application.

Claims 1-1018, 1020, 1024-28, 1030, 1032, 1034, 1038, 1040, 1044-48, 1050, 1052, 1054, 1058 are cancelled.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1022-1023, 1042-1043 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The claims lack support in the specification as written. According to the specification (e.g. pages 31-45), the instant compounds are synthesized from natural carotenoid or derivative thereof. Therefore, the compounds being synthetic products cannot be deemed from natural source(s). By deleting the claims the rejection would be overcome.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

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Claims 1021-1023, 1029, 1031, 1037, 1041-1043, 1049, 1051, 1057 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims improperly depend from their independent claims for failure to limit the scope of the independent claims. The claims and their independent claims are drawn to the same compounds. The dependent claims cite properties or sources of the compounds. According to the specification the compounds of the independent claims have the cited properties and are from the cited sources. Therefore, claims 1021-1023, 1029, 1031, 1037, 1041-1043, 1049, 1051, 1057 are duplicates of their independent claims. By deleting the claims the rejection would be overcome. Applicant should note that properties, functions and utilities are not limitations in a composition or product claim under the US patent practice.

#### ***Allowable Subject Matter***

Claims 1019, 1033, 1035-1036, 1039, 1053, 1055-1056 are allowable over prior arts of record.

#### ***Abstract***

The abstract is objected to for being too long. A copy of a new abstract as suggested by the Examiner is attached herewith.

#### ***Drawing***

Each of figures 11, 14 and 35 have multiple figures while they each have only one description in the specification. The term "panel" in the description of figure 16 should be replaced with 16A, 16B etc as appropriate.

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***Telephone Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Taofiq A. Solola, PhD, JD, whose telephone number is (571) 272-0709.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Joseph McKane, can be reached on (571) 272-0699. The fax phone number for this Group is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-1600.

  
**TAOFIQ SOLOLA**  
**PRIMARY EXAMINER**  
Group 1626

July 7, 2005

Continuation of Disposition of Claims: Claims pending in the application are 23,37,43,57,1019,1021,1029,1031,1033,1035,1039,1041,1049,1051,1053 and 1055.